

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**KEITH ABSHEAR,**

**Petitioner,**

**-vs-**

**Case No. 3-:05-CV-258**

**ERNIE MOORE, Warden,**

**District Judge Thomas M. Rose**

**Respondent.**

**Chief Magistrate Judge Michael R. Merz**

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**ENTRY AND ORDER OVERRULING KEITH ABSHEAR'S  
OBJECTIONS (Doc. #17) TO CHIEF MAGISTRATE JUDGE MICHAEL  
R. MERZ'S REPORT AND RECOMMENDATIONS (Doc. #15);  
OVERRULING KEITH ABSHEAR'S OBJECTIONS (Doc. #26) TO CHIEF  
MAGISTRATE JUDGE MICHAEL R. MERZ'S SUPPLEMENTAL  
REPORT AND RECOMMENDATIONS (Doc. #23); ADOPTING CHIEF  
MAGISTRATE JUDGE MERZ'S REPORT AND RECOMMENDATIONS  
AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS IN  
THEIR ENTIRETY AND TERMINATING THIS CASE**

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This matter is before the Court pursuant to Petitioner Keith Abshear's ("Abshear's")  
Objections to the Report and Recommendations and to the Supplemental Report and  
Recommendations of Chief Magistrate Judge Michael R. Merz. The Report and  
Recommendations was filed on December 26, 2006, and Abshear's Objections thereto were filed  
on February 15, 2007. The Supplemental Report and Recommendations was filed on August 28,  
2007, and Abshear's Objections thereto were filed on November 16, 2007. Both the Report and  
Recommendations and the Supplemental Report and Recommendations address Abshear's  
Petition for a Writ of Habeas Corpus.

The Report and Recommendations finds that Abshear procedurally defaulted in presenting each of his Grounds for Relief to the state courts, those defaults were held against him by the state courts, and he is unable to excuse the defaults. (Doc. #15.) Abshear objected to the Report and Recommendations (doc. #17) and the Warden responded (doc. #18). Abshear's objections to the Report and Recommendations were then argued orally on March 26, 2007, at Abshear's request.

The Chief Magistrate Judge then issued the Supplemental Report and Recommendations (doc. #23) to which Abshear objected (doc. #24). The Warden did not file objections to the Supplemental Report and Recommendations and did not file a response to Abshear's Objections. The Supplemental Report and Recommendations addresses each of Abshear's objections to the Report and Recommendations and reaches the same conclusion as the Report and Recommendations regarding procedural default.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Abshear's objections to the Chief Magistrate Judge's Report and Recommendations and Abshear's objections to the Chief Magistrate Judge's Supplemental Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Chief Magistrate Judge's Report and Recommendations and Supplemental Report and Recommendations are ADOPTED in their entirety. Abshear's Petition for a Writ of Habeas Corpus is DISMISSED WITH PREJUDICE as barred by procedural default.

A decision on a Certificate of Appealability awaits a request therefore. The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

**DONE** and **ORDERED** in Dayton, Ohio, this Third day of March, 2008.

**s/Thomas M. Rose**

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record